IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL UNDER ARBITRATION ACT NO.1/2002

Shri Ignatius C.D'Silva,
major of age, residing at
Ambelim, Assolna, Salcete, Goa. .... Appellant.

V/s

Shri Shantaram S. Salgaonkar,
major of age, contractor,
residing at Bainfol, Assolna,
Salcete, Goa. .... Respondent.

Shri S.S. Kantak, Advocate for the appellant.

Shri S.D. Lotlikar, Sr. Advocate with Mr. A.D. Bhobe, Advocate for the respondent.

CORAM : P.V. HARDAS, J.

DATE : JULY 11, 2002.

ORAL JUDGMENT :

By consent of parties, this appeal is taken up for final disposal at the stage of admission.

This is an appeal against the order of the Civil Judge, Sr. Division, at Margao, dated 16.4.2001 in Special (Arbi) Civil Suit No.147/95/A. The order of the learned Civil Judge, Sr. Division, Margao, decided the objections which had been taken by the present appellant.

2. It is needless to refer to the other facts, but it will suffice to state that the suit of the present respondent for appointment of arbitrator, was filed in the year 1995. The learned trial Court by order appointed the arbitrator in the year 1995 and the arbitrator entered upon the reference pursuant to the

order of the learned trial Court in the year 1997. The Award was passed in the year 2000. Since the arbitration proceedings had commenced in the year 1997, after the new Act i.e. Arbitration and Conciliation Act, 1996 had come into force, the provisions of the new Act would be applicable and not the provisions of the Arbitration Act, 1940 (old Act).

3. The objections which had been filed by the present appellant, have been rejected by the learned trial Court and one of the grounds is that the objections had not been filed within the prescribed time. According to the learned trial Court, the present appellant was notified about filing of the Award by the Arbitrator on 7.12.2000 by substituted service and the objections were filed by the defendant (present appellant) on 15.1.2001. Therefore, according to the learned trial Court, the objections had been filed after a period of 30 days, which period is contemplated under the old Act. Therefore, the objections were time barred.

4. I have heard Mr. S.S. Kantak, the learned Counsel appearing for the appellant and Mr. S.D. Lotlikar, learned Senior Advocate appearing for the respondent. There is no dispute before me that the provisions of the new Act would be applicable and, therefore, the learned trial Court erred in dismissing

the objections filed by the present appellant as being barred by time. Since the provisions of the new Act have not been followed, the Judgment of the learned trial Court dismissing the objections, cannot be sustained. On this short ground, therefore, the appeal under Arbitration Act, is allowed and the Judgment of the Civil Judge, Sr. Division, Margao dated 16.4.2001 in Special (Arbi) Civil Suit No.147/95/A is, hereby, quashed and set aside and the matter is remitted back to the learned trial Court for proceeding afresh, as per the provisions of the Arbitration and Conciliation Act, 1996.

5. In the result, therefore, the appeal is allowed. The trial Court shall dispose of the matter as expeditiously as possible. The parties to appear before the trial Court on 26th July, 2002. There shall be no order as to costs.

P.V. HARDAS, J.

ssm.